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6 UNITED STATES DISTRICT COURT
7 SOUTHERN DISTRICT OF CALIFORNIA
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9 FREDDIE HUGHEY,
10 CDCR #E-95781,

11 Plaintiff,

12 vs.

13 SCOTT KERNAN, Secretary,

14 Defendant.
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Case No.: 3:18-cv-00313-WQH-BGS

ORDER

**1) GRANTING MOTION TO
PROCEED IN FORMA PAUPERIS
[ECF No. 2]**

AND

**2) DIRECTING U.S. MARSHAL TO
EFFECT SERVICE PURSUANT TO
28 U.S.C. § 1915(d) AND
Fed. R. Civ. P. 4(c)(3)**

19 HAYES, Judge:

20 Freddie Hughey (“Plaintiff”), proceeding pro se and incarcerated at Richard J.
21 Donovan Correctional Facility (“RJD”) in San Diego, California, has filed a civil rights
22 Complaint pursuant to 42 U.S.C. § 1983 (ECF No. 1).

23 Plaintiff claims that the Secretary of the California Department of Corrections and
24 Rehabilitation (“CDCR”) has violated his rights to due process and equal protection of the
25 laws by promulgating and enforcing provisions of Title 15 of the California Code of
26 Regulations to exclude him from eligibility for early parole consideration as a “non-violent
27 offender” as provided by California’s Public Safety and Rehabilitation Act of 2016. *Id.*
28 at 2–7.

1 Plaintiff did not prepay the \$400 civil filing fee required by 28 U.S.C. § 1914(a) at
2 the time of filing; instead, he has filed a Motion to Proceed *In Forma Pauperis* (“*IFP*”)
3 pursuant to 28 U.S.C. § 1915(a) (ECF No. 2).

4 **I. Motion to Proceed *In Forma Pauperis***

5 All parties instituting any civil action, suit, or proceeding in a district court of the
6 United States, except an application for writ of habeas corpus, must pay a filing fee of
7 \$400.¹ See 28 U.S.C. § 1914(a). The action may proceed despite a plaintiff’s failure to
8 prepay the entire fee only if he is granted leave to proceed *IFP* pursuant to 28 U.S.C.
9 § 1915(a). See *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v.*
10 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, a prisoner granted leave to proceed
11 *IFP* remains obligated to pay the entire fee in “installments,” *Bruce v. Samuels*, 136 S. Ct.
12 627, 629 (2016), regardless of whether his action is ultimately dismissed. See 28 U.S.C.
13 § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

14 Section 1915(a)(2) requires prisoners seeking leave to proceed *IFP* to submit a
15 “certified copy of the trust fund account statement (or institutional equivalent) for . . . the
16 6-month period immediately preceding the filing of the complaint.” 28 U.S.C.
17 § 1915(a)(2); *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified
18 trust account statement, the Court assesses an initial payment of 20% of (a) the average
19 monthly deposits in the account for the past six months, or (b) the average monthly balance
20 in the account for the past six months, whichever is greater, unless the prisoner has no
21 assets. See 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having custody
22 of the prisoner then collects subsequent payments, assessed at 20% of the preceding
23 month’s income, in any month in which the prisoner’s account exceeds \$10, and forwards
24 those payments to the Court until the entire filing fee is paid. See 28 U.S.C. § 1915(b)(2).

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27 ¹ In addition to the \$350 statutory fee, civil litigants must pay an administrative fee of \$50. See 28
28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule, § 14 (eff.
June 1, 2016)). The additional \$50 administrative fee does not apply to persons granted leave to proceed
IFP. *Id.*

1 In support of his *IFP* Motion, Plaintiff has submitted a copy of his CDCR Inmate
2 Statement Report and a Prison Certificate completed by an accounting officer at RJD.
3 (ECF No. 3 at 1–3). These statements show that Plaintiff has carried no average monthly
4 balance, has had no monthly deposits to his account over the 6-month period immediately
5 preceding the filing of his Complaint, and, consequently, had no available balance at the
6 time of filing. (ECF No. 3 at 1, 3). Based on this accounting, no initial partial filing fee is
7 assessed. *See* 28 U.S.C. § 1915(b)(4) (providing that “[i]n no event shall a prisoner be
8 prohibited from bringing a civil action or appealing a civil action or criminal judgment for
9 the reason that the prisoner has no assets and no means by which to pay the initial partial
10 filing fee”); *Taylor*, 281 F.3d at 850 (finding that 28 U.S.C. § 1915(b)(4) acts as a “safety-
11 valve” preventing dismissal of a prisoner’s *IFP* case based solely on a “failure to
12 pay . . . due to the lack of funds available to him when payment is ordered”).

13 Therefore, the Court GRANTS Plaintiff’s Motion to Proceed *IFP* (ECF No. 2),
14 declines to exact any initial filing fee, and directs the Secretary of the CDCR, or his
15 designee, to instead collect the entire \$350 balance of the filing fees required by 28 U.S.C.
16 § 1914 and forward them to the Clerk of the Court pursuant to the installment payment
17 provisions set forth in 28 U.S.C. § 1915(b)(1). *See id.*

18 **II. Sua Sponte Screening Pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b)**

19 Because Plaintiff is a prisoner and is proceeding *IFP*, his Complaint requires a pre-
20 answer screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b). Under these statutes,
21 the Court must sua sponte dismiss a prisoner’s *IFP* complaint, or any portion of it, which
22 is frivolous, malicious, fails to state a claim, or seeks damages from defendants who are
23 immune. *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (discussing
24 28 U.S.C. § 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010)
25 (discussing 28 U.S.C. § 1915A(b)). “The purpose of [screening] is ‘to ensure that the
26 targets of frivolous or malicious suits need not bear the expense of responding.’”
27 *Nordstrom v. Ryan*, 762 F.3d 903, 920 n.1 (9th Cir. 2014) (quoting *Wheeler v. Wexford*
28 *Health Sources, Inc.*, 689 F.3d 680, 681 (7th Cir. 2012)).

1 “The standard for determining whether a plaintiff has failed to state a claim upon
2 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of
3 Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*, 668 F.3d
4 1108, 1112 (9th Cir. 2012); *see also Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th Cir.
5 2012) (noting that screening pursuant to § 1915A “incorporates the familiar standard
6 applied in the context of failure to state a claim under Federal Rule of Civil Procedure
7 12(b)(6)”). Rule 12(b)(6) requires a complaint “contain sufficient factual matter, accepted
8 as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S.
9 662, 678 (2009) (internal quotation marks omitted). Detailed factual allegations are not
10 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
11 conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678. “Determining whether a
12 complaint states a plausible claim for relief [is] . . . a context-specific task that requires the
13 reviewing court to draw on its judicial experience and common sense.” *Id.* The “mere
14 possibility of misconduct” or “unadorned, the defendant-unlawfully-harmed-me
15 accusation[s]” fall short of meeting this plausibility standard. *Id.*

16 The Court finds that Plaintiff’s Complaint contains “sufficient factual matter,
17 accepted as true,” to allege due process and equal protection claims that are “plausible on
18 [their] face,” *Iqbal*, 556 U.S. at 678, and therefore sufficient to survive the “low threshold”
19 for proceeding past the screening required by 28 U.S.C. §§ 1915(e)(2) and 1915A(b).² *See*
20 *Wilhelm*, 680 F.3d at 1123. Therefore, the Court will order the U.S. Marshal to effect
21 service upon Defendant on Plaintiff’s behalf. *See* 28 U.S.C. § 1915(d) (“The officers of
22 the court shall issue and serve all process, and perform all duties in [IFP] cases.”); Fed. R.
23 Civ. P. 4(c)(3) (“[T]he court may order that service be made by a United States
24 marshal . . . if the plaintiff is authorized to proceed *in forma pauperis* . . .”).

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27 ² Plaintiff is cautioned that “the sua sponte screening and dismissal procedure is cumulative of, and
28 not a substitute for, any subsequent Rule 12(b)(6) motion that [the defendant] may choose to bring.”
Teahan v. Wilhelm, 481 F. Supp. 2d 1115, 1119 (S.D. Cal. 2007).

1 **III. Conclusion and Orders**

2 For the reasons discussed, the Court:

3 1) GRANTS Plaintiff's Motion to Proceed *IFP* (ECF No. 2);

4 2) DIRECTS the Secretary of the CDCR, or his designee, to collect from
5 Plaintiff's prison trust account the \$350 filing fee owed in this case by garnishing monthly
6 payments from his account in an amount equal to twenty percent (20%) of the preceding
7 month's income and forwarding those payments to the Clerk of the Court each time the
8 amount in the account exceeds \$10 pursuant to 28 U.S.C. § 1915(b)(2). ALL PAYMENTS
9 SHALL BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER ASSIGNED TO
10 THIS ACTION;

11 3) DIRECTS the Clerk of the Court to serve a copy of this Order on Scott
12 Kernan, Secretary, CDCR, P.O. Box 942883, Sacramento, California, 94283-0001;

13 4) DIRECTS the Clerk to issue a summons as to Plaintiff's Complaint (ECF No.
14 1) and forward it to Plaintiff along with a blank U.S. Marshal Form 285 for the Defendant.
15 In addition, the Clerk will provide Plaintiff with a certified copy of this Order, a certified
16 copy of his Complaint, and the summons so that he may serve the Defendant. Upon receipt
17 of this "*IFP Package*," Plaintiff must complete the Form 285 as completely and accurately
18 as possible, *include an address where the Defendant may be served*, see S.D. Cal. CivLR
19 4.1.c, and return it to the United States Marshal according to the instructions the Clerk
20 provides in the letter accompanying his *IFP* package;

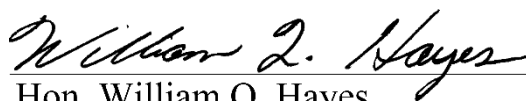
21 5) ORDERS the U.S. Marshal to serve a copy of the Complaint and summons
22 upon the Defendant as directed by Plaintiff on the USM Form 285 provided to him. All
23 costs of that service will be advanced by the United States. See 28 U.S.C. § 1915(d); Fed.
24 R. Civ. P. 4(c)(3);

25 6) ORDERS the Defendant, once served, to reply to Plaintiff's Complaint within
26 the time provided by the applicable provisions of Federal Rule of Civil Procedure 12(a).
27 See 42 U.S.C. § 1997e(g)(2) (While a defendant may occasionally be permitted to "waive
28 the right to reply to any action brought by a prisoner confined in any jail, prison, or other

1 correctional facility under section 1983,” once the Court has conducted its sua sponte
2 screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b), defendant is required to
3 respond.); and

4 7) ORDERS Plaintiff, after service has been effected by the U.S. Marshal, to
5 serve upon the Defendant, or, if appearance has been entered by counsel, upon Defendant’s
6 counsel, a copy of every further pleading, motion, or other document submitted for the
7 Court’s consideration pursuant to Fed. R. Civ. P. 5(b). Plaintiff must include with every
8 original document he seeks to file with the Clerk of the Court a certificate stating the
9 manner in which a true and correct copy of that document has been served on the Defendant
10 or his counsel and the date of that service. *See* S.D. Cal. CivLR 5.2. Any document
11 received by the Court which has not been properly filed with the Clerk, or which fails to
12 include a Certificate of Service upon the Defendant, may be disregarded.

13 Dated: May 21, 2018

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15 Hon. William Q. Hayes
16 United States District Court
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